

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

SCHEDULING ORDER

PRESENCE OF EACH DEFENDANT  
AT ARGUMENT ON OBJECTIONS  
TO PSR

05-CR-6161L

v.

JOHN NICOLO, CONSTANCE ROEDER,  
DAVID FINNMAN,

Defendants.

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I have directed bifurcated proceedings concerning resolution of sentencing issues. A schedule has been established for filing objections to the presentence reports and argument dates concerning those objections have, or will soon be, scheduled.

The issue is whether defendants are required to be present at this proceeding. None of the defendants now reside near Rochester, New York. Mr. Nicolo is, of course, in custody, and defendants Finnman and Roeder are not.

Obviously, there is no problem if defendant waives his presence at the argument. The question, though, is whether, without the waiver, must the defendant be physically present in court.

FED. R. CRIM. P. 43 states that a defendant "must" be present at "sentencing." This argument on the presentence report is not the pronouncement of sentencing, but it is certainly an important part of the sentencing process.

Defendant's presence is not required under Rule 43(b)(3) at a proceeding that involves only a "hearing on a question of law."

I direct that the parties advise the Court, in writing, on or before January 9, 2009 as to their respective positions and intentions on this issue. Depending on your positions, arrangements will have to be made by the defendants and by the United States Marshal Service.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 5, 2009.